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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,455	08/08/2003	Jennifer A. Gaul	410058	3437
30954	7590	06/01/2007	EXAMINER TRAN LIEN, THUY	
LATHROP & GAGE LC 2345 GRAND AVENUE SUITE 2800 KANSAS CITY, MO 64108			ART UNIT 1761	PAPER NUMBER
MAIL DATE 06/01/2007		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/637,455	GAUL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 07 May 2007.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 5-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

Claims 13-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 5/7/07, applicant amends claim 13 to recite " an unhydrated wheat protein isolate. This limitation is not supported by the original disclosure because there is nothing in the specification about the protein being unhydrated. Adding water to the mix is not connected or related to the protein being unhydrated.

Claims 13-14, 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method of preparing a food product having a reduced fat content wherein the product is baked. However, applicant does not teach how the fat content is reduced when the product is baked. The specification discloses that the addition of isolate wheat protein reduces the adsorption of the frying fat medium into the fried food product to reduce the fat content. However, there is no disclosure of how the fat content is reduced when the product is baked. When the product is baked, there is not adsorption of the frying fat medium; thus, how is the fat reduced in a baked product?

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is vague and indefinite because it does not further limit claim 13 and is contradicting claim 13. Claim 13 recites the food product is cooked by contacting it with oil or fat but claim 16 recites baking. In the response filed 9/28/06, applicant argues it is common to grease the pan with oil and fat. However, claim 13 does not recite greasing; it specifically states "cooking by contacting with oil or fat". Greasing the pan does not cook the product.

Claims 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy et al ( 5403610).

Murphy et al disclose a composition comprising wheat protein. The protein is present in amount of at least .1 parts per 100 parts of flour. When the protein is present in an aqueous dispersion that is added to a flour or batter formulation, the protein in the dispersion amount to .1-8 parts per 100 parts of flour. The composition is added to dough or batter to make reduce-fat or fat free baked goods such as doughnuts, cakes, cookies etc... The wheat protein can be wheat protein isolate. ( see col. 1 lines 45-62, col. 3 lines 32-36, col. 5 lines 15-26 and col. 7 lines 17-23)

Murphy et al disclose the composition and the amount of wheat protein isolate is in the range claimed. The limitation of " for use in preparing a fried food product which can be a donut" is an intended use of the composition and does not determine its

patentability. Also, since Murphy et al disclose the same composition, it is inherent that the composition has the same intended use.

Claims 8-9,11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al in view of Murphy et al.

Fischer et al disclose a fried food product. The product is made from a dough which is formed into a donut and fried to form the fried food product. ( see example 1)

Fischer et al do not disclose adding wheat protein isolate in the amount claimed.

Murphy et al teach to add a composition comprising hydrocolloid and protein to baked goods including donut to improved texture, mouthfeel, softness, moistness, moisture-retention, shelf-life, flavor enhancement, fatty attribute and volume. The composition takes away the inclusion of overtly added fat material such as shortening from the dough. The protein includes wheat protein isolate. ( col. 1 lines 45-55, col. 4 lines 50-60, col. 7 lines 17-21)

It would have been obvious to one skilled in the art to add the composition disclosed by Murphy et al to the Fischer et al composition to obtain the benefits disclosed by Murphy et al. Murphy et al disclose the food products in which the composition is used include donut; thus, its addition to the Fischer et al product is totally compatible and enhances the properties of the Fischer et al product. The addition of the composition takes away the need to add shortening in the Fischer et al composition which will decrease the overall fat content of the product.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al in view of Green et al.

Fischer et al disclose a fried food product. The product is made from a dough which is formed into a donut and fried to form the fried food product. ( see example 1)

Fischer et al do not disclose adding wheat protein isolate in the amount claimed.

Greene et al teach to use flour with high protein content or to add proteinaceous substance such as wheat gluten to noodle dough which is subjected to frying. The addition of the protein lower the amounts of oil up-take. The amount of protein added is up to about 5% based upon the weight of the flour employed. ( see col. 5 lines 5-18)

It would have been obvious to add wheat protein in the amount taught by Greene et al to the Fischer et al composition to obtain the benefit taught by Green et al to reduce the fat content of the product. It would have been obvious to use wheat protein isolate when desiring a more concentrated and purer protein material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 27, 2007

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1700*